

be needed cannot be assumed by other employees.

(5 U.S.C. 4101 *et seq.*)

[FR Doc. 82-458 Filed 1-7-82; 8:45 am]

BILLING CODE 6325-01-M

## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

#### Practices and Procedures

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** On August 11, 1981, the Merit Systems Protection Board ("the Board") published a notice of proposed rulemaking to amend 5 CFR 1201.126 to distinguish the penalties the Board may impose for Hatch Act violation under 5 U.S.C. 7325 from the range of penalties available in other disciplinary actions under 5 U.S.C. 1207(b) and to add a citation to the United States Code. (46 FR 40703) The period for public comments is now closed, the Board has considered the single comment it received and publishes these amendments for immediate effect.

**EFFECTIVE DATE:** January 8, 1982.

**FOR FURTHER INFORMATION CONTACT:** Alan Greenwald, (202) 653-7111.

**SUPPLEMENTARY INFORMATION:** The Merit Systems Protection Board proposed to amend 5 CFR 1201.126 by adding a new paragraph (f) which specifies the penalties the Board may impose in accordance with 5 U.S.C. 7325, and by removing from § 1201.126(c) its reference to Hatch Act enforcement actions. The Board also proposed to amend § 1201.126(e) only to add the statutory citation for the Board's authority to impose penalties under the Federal Employees Flexible and Compressed Work Schedule Act.

The only comment received by the Board on the proposed amendment asserted that passage of the Civil Service Reform Act of 1978 (CSRA), which placed Hatch Act enforcement authority in the Special Counsel of the Board, superseded the minimum penalty provisions of 5 U.S.C. 7325. The Board has concluded that this is not the case. The penalty section of the Hatch Act, 5 U.S.C. 7325 was amended on August 14, 1979, some ten months after the passage of the CSRA. Pub. L. 96-54 section 2(a)(44). Congress, in that amendment, substituted the Merit Systems Protection Board for the Civil Service Commission in the following sentence: "However, if the Merit Systems Protection Board

finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board." The Congress recognized the Board as the appropriate forum for adjudicating Hatch Act disciplinary actions but continued in effect the limits on what penalties may be imposed in those actions.

### PART 1201—PRACTICES AND PROCEDURES

Accordingly, the Merit Systems Protection Board, pursuant to the authority contained in 5 U.S.C. 1205(g), permitting the Board to "prescribe such regulations as may be necessary for the performance of its functions," revises 5 CFR 1201.126 to read as follows:

#### § 1201.126 Final Orders of the Board.

(a) In any action seeking correction of a prohibited personnel practice, the Board may order such corrective actions as it considers appropriate after providing an opportunity for comment by the agency and OPM (5 U.S.C. 1206(c)(1)(B)).

(b) In any action seeking correction of a pattern of prohibited personnel practices not otherwise appealable to the Board, the Board may order an agency or employee to take whatever measures the board may determine to be necessary or appropriate (5 U.S.C. 1206(h)).

(c) In any action to discipline an employee except as provided in paragraphs (e) and (f) of this section, the Board may order a removal, reduction in grade, debarment (not to exceed five years), suspension, reprimand, or an assessment of civil penalty not to exceed \$1,000 (5 U.S.C. 1207).

(d) In any action seeking the withholding of Federal funds under 5 U.S.C. 1506(a)(2) in which a State or local employee has engaged in prohibited political activities, the Board may order the Federal agency administering loans or grants to a State or local agency that reappoints the offending employee within a period of 18 months to withhold a sum not to exceed two years' pay of the offending employee at the rate he/she was receiving at the time of the violation.

(e) In any action to discipline an employee under the Federal Employees Flexible and Compressed Work Schedule Act, 5 U.S.C. 6101 Note, a final order of the Board may impose disciplinary action consisting of:

(1) Removal from Federal employment for any period of time the Board may prescribe;

(2) Suspension; or

(3) Such other discipline as the Board shall deem appropriate.

(f) In any action to discipline an employee for violation of 5 U.S.C. 7324, the Board shall order the employee's removal, unless it finds by unanimous vote that the violation does not warrant removal and imposes instead a penalty of not less than 30 days suspension without pay.

For The Board.

Ersa H. Poston,  
Vice Chair.

December 18, 1981.

[FR Doc. 82-437 Filed 1-7-82; 8:45 am]

BILLING CODE 7400-01-M

### 5 CFR Part 1201

#### Practices and Procedures

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Interim regulation; request for comment.

**SUMMARY:** This regulation establishes procedures for the adjudication by the Merit Systems Protection Board of appeals of personnel actions filed by Board employees with the Board. In addition, the Board requests comments on these regulations.

**EFFECTIVE DATE:** January 8, 1982. Comments should be submitted in writing on or before February 8, 1982.

**ADDRESS:** Comments should be submitted in writing and addressed to Robert E. Taylor, Secretary, Merit Systems Protection Board, 1120 Vermont Avenue, N.W., Washington, D.C. 20419.

**FOR FURTHER INFORMATION CONTACT:** Bruce L. Moyer (202) 653-7171.

**SUPPLEMENTARY INFORMATION:** The Board believes that the interests of its employees are best served by the limitation of the direct involvement of Board members in the adjudication of appeals filed with the Board by Board employees. Therefore, the Board will assign such appeals to its administrative law judges for adjudication pursuant to the Board's procedures for the hearing of appellate cases, found at 5 CFR Part 1201, Subpart B.

The initial decision of the administrative law judge in such cases will not be disturbed by the Board, except in cases of demonstrated harmful procedural irregularity in the proceedings before the administrative law judge or clear error of law. In addition, the Board will defer ruling on any interlocutory appeals or motions to disqualify the administrative law judge



assigned to the case until the initial decision has been issued.

Adoption of this regulation will promote rather than diminish the rights of Board employees by ensuring an impartial decisionmaker and avoid even the appearance of conflict of interest. Assignment of the appeals of Board employees to administrative law judges, together with existing rights to judicial review, will adequately protect the due process rights of the employees.

Inasmuch as this regulation pertains to Board practice and procedure, and inasmuch as the rights of appellants in pending cases make delay impracticable and contrary to the public interest, the Board finds that there is good cause for the immediate adoption of this regulation.

#### Regulatory Flexibility Act

The Vice Chair, Merit Systems Protection Board, certifies that the Board is not required to prepare an initial or final regulatory analysis of this proposed rule, pursuant to section 603 or 604 of the Regulatory Flexibility Act, because of her determination that this rule would not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

#### PART 1201—PRACTICES AND PROCEDURES

5 CFR Part 1201, Subpart B is amended by revising the first sentence of § 1201.11 and adding § 1201.13 to provide as follows:

##### § 1201.11 Scope and policy.

The rules in this subpart apply to appellate proceedings of the Board except as otherwise provided in § 1201.13. \* \* \*

##### § 1201.13 Internal appeals of Board employees.

Appeals of actions taken against Board employees will be assigned to administrative law judges for adjudication pursuant to this subchapter, provided, however, that the policy of the Board will be to insulate such adjudications from agency involvement insofar as possible. Accordingly, initial decisions in such cases shall not be disturbed by the Board except in cases of demonstrated harmful procedural irregularity in the proceedings before the administrative law judge or clear error of law. In addition, the Board, as a matter of policy, will defer ruling on any interlocutory appeals or motions to disqualify the administrative law judge

assigned to such cases until the initial decision has been issued.

Dated: December 22, 1981.

For the Board.

Ersa H. Poston,  
Vice Chair.

[FR Doc. 82-301 Filed 1-7-82; 8:45 am]

BILLING CODE 7400-01-M

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Stabilization and Conservation Service

##### 7 CFR Part 701

##### Conservation and Environmental Programs

**AGENCY:** Agricultural Stabilization and Conservation Service (ASCS), USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule will amend the existing regulations to carry out the Agricultural Conservation Program (ACP) and the Emergency Conservation Program (ECP). The regulations governing the ACP are amended to: (1) Provide that practices cost-shared under the ACP must be approved by the county ASC committees before on-site work is begun to carry out the practice; (2) reduce the maximum cost-share level from 90 percent to 75 percent of the cost of performing the practices under the ACP, except that a higher level may be authorized by ASCS; (3) change the maximum cost-share rate under the ACP for farmers determined to be low-income farmers from 90 percent to 80 percent of the cost of performing the practice; and (4) authorize conservation practices under the ACP that have significant energy conservation benefits. This final rule also amends the existing regulations governing the ECP to provide assistance at a decreased level of cost-sharing so that cost-sharing may be provided to as many producers as possible within available funds and to provide for a maximum cost-share limitation.

**EFFECTIVE DATE:** December 31, 1981.

##### FOR FURTHER INFORMATION CONTACT:

Director, Conservation and Environmental Protection Division, (CEPD), ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013, telephone 202-447-6221. The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of implementing each option is available on request from the Director, CEPD.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed for

compliance with Executive Order 12291 Secretary Memorandum No. 1512-1 and has been classified as "not major," it has been determined that these program provisions will not result in: (1) An annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individuals, industries, Federal, State or local government agencies or geographic regions; or (3) cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The titles and numbers of the Federal Assistance Program that this notice applies to are: Title—Agricultural Conservation Program; Number—10.063; Title—Emergency Conservation Program, Number—10.054; as found in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A-95 was not used to assure that units of local governments are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since ASCS is not required to publish a notice of proposed rulemaking pursuant to 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this rule.

The ACP is authorized generally by Sections 7-17 of the Soil Conservation and Domestic Allotment Act of 1936, as amended (16 U.S.C. 590h(b) *et seq.*). The ACP provides financial incentives and technical assistance to encourage eligible agricultural producers to voluntarily perform soil and water conservation and pollution abatement measures. The Emergency Conservation Program (ECP) is authorized by the Agricultural Credit Act of 1978 (Pub. L. 95-334, 92 Stat. 433). This program is designed to provide cost-share funds for emergency assistance to meet only the critical needs of agricultural producers due to severe drought or other natural disaster.

Notice of proposed rulemaking was published in the Federal Register on July 31, 1981 at 46 FR 39163, with respect to the changes ASCS intended to make in the administration of the ACP and ECP. ASCS received eight responses with respect to this proposed rule. However, none of the comments were of such significance to require that ASCS make major changes from the proposed regulation. All letters received are on file and available for public inspection



in Room 3608, South Building, 14th & Independence Avenue, S.W., Washington, D.C.

The following is a summary of the comments received and actions taken:

#### Comment

Three respondents commented that including authority for cost-sharing for energy conservation measures under ACP would tend to direct funds away from the primary soil and water objective of the program.

#### Response

The Energy Security Act of 1980 (Pub. L. 96-294, 94 Stat. 611, approved June 30, 1980) authorizes the Secretary to provide for cost-sharing and technical assistance under the ACP to farmers to encourage energy conservation. While certain references to this discretionary authority for cost-sharing for energy conservation practices is being added to the regulations, it has been determined that the program will not be expanded at this time to include cost-sharing for practices that are primarily for energy conservation because of limited funding.

#### Comment

Four respondents commented that requiring farmers to receive approval from the county ASC committee before starting practice installation was an excellent change in the program. However, two respondents commented that the process for obtaining practice approval would be hindered as a result of this requirement.

#### Response

It has been determined that this change in the program would aid in meeting one of the objectives of ACP which is to provide cost-share assistance only for those conservation practices which farmers could not or would not carry out to the needed extent without such assistance. This amendment to the regulations providing that cost-share assistance will not be available for a practice unless formal approval is given by the county ASC committee will give the committees more flexibility in allocating available funds to higher priority, more serious conservation and pollution abatement problems. A definite commitment of funds also provides a more effective method of control for the county ASC committees. Additionally, producer misunderstanding and dissatisfaction with the program should be reduced with closer monitoring of participation requirements.

#### Comment

Two respondents commented that reducing the ACP maximum cost-share level from 90 percent to 75 percent of the cost of performing a practice under the program would have a negative impact on the program. One respondent feels that while the reduction in the level of cost-sharing would tend to spread limited money to more people, the program should not be directed to this end during times of limited budgets. The other respondent felt that the reduction in the cost-share levels would tend to concentrate participation in the ACP with wealthier farmers. In addition, one respondent, although supporting the change in the levels of cost-sharing under the program, recommended that the \$3500 maximum payment limitation be eliminated.

#### Response

It has been determined that lowering the maximum of cost-sharing under the ACP for annual practices from 90 percent of the cost of performing a practice to 75 percent of the cost of performing such practice would increase the cost-effectiveness of the program and achieve the maximum conservation benefits possible for large and small farmers alike within present funding limits. The 75 percent cost-share level is also identical to the maximum level required by statute for ACP long-term agreements. It has been determined that a uniform maximum cost-share level for long-term agreements and annual practices of 75 percent would be more desirable and equitable for all participants in the program. Further, cost-share assistance may be provided at a level higher than 75 percent of the cost of performing a practice, if it is determined by the Deputy Administrator, State and County Operations, to be necessary to encourage producers to carry out conservation practices. The requirement for a \$3500 maximum payment limitation for ACP is set forth each year in the appropriations acts which provides for funding for the program.

#### Comment

Two respondents felt that reducing the ACP maximum cost-share level for low income farmers from 90 percent of the cost of performing the practice to 80 percent would discourage low income farmers from participating in the program because of a lack of capital to invest in conservation practices. As a result, a greater amount of program funding would be directed to larger, more affluent farmers.

#### Response

It has been determined that providing cost-share assistance at a maximum level of 80 percent of the cost of performing a practice is sufficient to obtain needed participation from low income farmers. ACP needs to encourage more low income farmers to invest in the installation of conservation and pollution abatement measures on their farms and at the same time improve their farm income potential. By limiting the cost-share percentage to 80 percent of cost of performing a practice, a greater amount of funds will be available for more low income farmers. Also many ACP practices are carried out with the farmer's labor and farm equipment accounting for his share of the practice cost. This fact would tend to elevate participation in the program by low income farmers.

#### Comment

Two respondents commented that decreasing the ECP maximum cost-share level would have a negative impact on the program. One respondent felt that during times of limited funding, the program should not be directed toward spreading limited funding to more participants. The other respondent concluded that by reducing the cost share levels under the ECP, smaller landowners would be forced out of the program because of the greater costs which must be borne by the program participant.

#### Response

Natural disasters vary considerably in intensity and may result in excessive damage to many conservation practices and acres of agricultural farmland. Restoration of such damaged practices and farmland is often beyond the financial capability of the landowner. ECP funds are used to help restore conservation practices and farmland that have been so severely damaged that restoration of such practices and farmland to productive agriculture use would not occur without Federal assistance. Limiting the amount of Federal assistance available under the ECP to any one landowner would have the desirable effect of allowing a greater number of landowners to participate in the program. Higher levels of landowners participation is necessary in times of limited Federal funding in order to be assured of maximum participation.

#### Comment

One commentator objected to the proposed \$200,000 maximum payment limitation under the ECP being applicable to the amount of cost-share



payments received by individuals, as well as the total amount of cost-share payments applicable to a pooling agreement. It was argued that such a limitation would tend to discourage pooling agreements.

#### Response

The \$200,000 maximum payment limitation for ECP applies to the amount of payments each may receive as the result of disaster. This limitation includes amounts that an individual may receive from a pooling agreement. However, the \$200,000 maximum payment limitation is not a limitation on the total amount of cost-share payments which may be applicable to a pooling agreement. The regulations have been modified to clarify this.

#### PART 701—CONSERVATION AND ENVIRONMENTAL PROGRAMS

Accordingly, the regulations at 7 CFR Part 701 are revised to read as follows:

1. Section 701.3 is amended by adding a new paragraph (b)(8) to read as follows:

##### § 701.3 Program objective.

(b) \* \* \*

(8) The types of conservation measures needed that have significant energy conserving benefits.

2. Section 701.9 is amended by adding a new paragraph (i) to read as follows:

##### § 701.9 Conservation practices.

(i) Encourage energy conservation practices.

3. Paragraph (b) of § 701.13 is revised to read as follows:

##### § 701.13 Level and rate of cost-sharing.

(b) Levels of cost-sharing under annual agreements for each practice shall not be in excess of 75 percent of the average cost of carrying out the practice as determined by the county committee. However, where the Deputy Administrator, State and County Operations, determines a higher level of cost-sharing is necessary to provide adequate incentive for producer to carry out a conservation practice, the Deputy Administrator, State and County Operations, may specifically authorize a higher level. (See § 701.19 for special provision for low-income farmers.)

4. Section 701.14 is revised to read as follows:

##### § 701.14 Starting of practices.

Costs will not be shared for practices or components of practices that are started before a formal approval is given by the county committee.

5. Paragraphs (a) and (b) of § 701.19 are revised to read as follows:

##### § 701.19 Special provisions for low-income farmers and ranchers.

(a) Except as otherwise provided in § 701.13(c), the county committee may approve, in the case of low-income farmers and ranchers as defined in this section, level of cost-sharing of up to 80 percent of the average cost of performing practices.

(b) A low-income farmer or rancher is one who, as determined by the county committee, is a small producer whose livelihood is largely dependent on the farm or ranch and whose prospective income and financial resources for the current year are such that the farmer or rancher could not reasonably be expected to perform needed conservation practices at levels of cost-sharing applicable to other persons in the county.

6. Section 701.51 is revised to read as follows:

##### § 701.51 Extent of cost-sharing.

(a) The maximum cost-share payment which may be made to any person by the Agricultural Stabilization and Conservation Service (ASCS) under the Emergency Conservation Program is limited to \$200,000 per person, per disaster, including the amount of any payment received by such person as the result of the disaster under a pooling agreement.

(b) The levels of cost-sharing for which cost-share payments may be made by ASCS for each practice under the program shall be based upon the following:

(1) The producer must agree to pay for the first twenty percent of the cost of the practice to restore the loss.

(2) With respect to the remainder of the cost of completing the practice to restore the loss, the county committee shall establish levels of cost-sharing for which payments may be made by ASCS as follows:

(i) Not to exceed eighty percent of the first \$50,000 of the cost of the practice(s) to restore the loss;

(ii) Not to exceed fifty percent for the next \$50,000 of the cost of the practice(s) to restore the loss; and

(iii) Not to exceed twenty-five percent of the remaining cost of the practice(s) to restore the loss.

(Pub. L. 74-46, Secs. 7-15, 16(a), 16(f), and 17, 49 Stat. 163, as amended (16 U.S.C. 590g-590, 590p(a), and 590q); Pub. L. 93-86, Secs. 1001-1010, 87 Stat. 241 (16 U.S.C. 1501-1510); Pub. L. 95-334, Secs. 401-402, 404-405, 92 Stat. 433 (16 U.S.C. 2201-2202, 2204-2205))

Signed at Washington, D.C., December 30, 1981.

C. Hoke Leggett,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 81-37479 Filed 12-31-81; 11:30 am]

BILLING CODE 3410-05-M

#### Agricultural Marketing Service

##### 7 CFR Part 910

[Lemon Reg. 341]

#### Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period January 10-16, 1982. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

**EFFECTIVE DATE:** January 10, 1982.

#### FOR FURTHER INFORMATION CONTACT:

William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981-82. The marketing policy was recommended by the committee following discussion at a public meeting on July 7, 1981. The committee met again publicly on January 5, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is easier.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the



declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting or recordkeeping provisions that are included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

#### **PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA**

Section 910.641 is added as follows:

##### **§ 910.641 Lemon regulation 341.**

The quantity of lemons grown in California and Arizona which may be handled during the period January 10, 1982, through January 16, 1982, is established at 225,000 cartons.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82-652 Filed 1-6-82; 8:45 am]

BILLING CODE 3410-02-M

#### **DEPARTMENT OF JUSTICE**

##### **Immigration and Naturalization Service**

##### **8 CFR Parts 101 and 264**

##### **Presumption of Lawful Admission; Registration and Fingerprinting of Aliens in the United States; Creation of Records of Lawful Permanent Resident Status for Aliens Eligible for Presumption of Lawful Admission for Permanent Residence and for Individuals Born Under Diplomatic Status in the United States**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This amendment to the regulations of the Immigration and Naturalization Service is made in order to institute a procedure for creation of records of lawful permanent residence for aliens eligible for presumption of lawful admission for permanent residence and for individuals born in the United States to foreign diplomats.

It has been judicially held that, for naturalization purposes, children born in the United States to foreign diplomats have the status of lawful permanent residents. In addition, two precedent decisions of this Service hold that these children are considered to be permanent residents. Until now, however, there was no procedure for creation of records of their lawful permanent residence. Under the new procedure, they are eligible to apply for creation of records of their permanent residence.

In the interest of consistency, we have also developed a parallel procedure for aliens eligible for presumption of lawful admission for permanent residence even though records of their admission cannot be found. This is a standardization of an existing procedure which will have a negligible effect on the aliens in question.

**EFFECTIVE DATE:** February 10, 1982.

##### **FOR FURTHER INFORMATION CONTACT:**

For general information: Stanley J. Kieskiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street, N.W., Washington, DC 20536. Telephone: (202) 633-3048.

For specific information: Alice Strickler, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, N.W., Washington, DC 20536. Telephone: (202) 633-5014.

**SUPPLEMENTARY INFORMATION:** Children who are born in the United States to accredited foreign diplomatic officers are not subject to the jurisdiction of the United States. They therefore are not United States citizens under the Fourteenth Amendment to the Constitution. According to an unreported decision, *Petition of Vivienne Yu*, U.S.D.C., Southern District of New York, A-11 537 691 (1965), these children are considered to be lawful permanent residents for purposes of naturalization. In addition, two precedent decisions of this Service, *Matter of Huang*, 11 I. & N. Dec. 190 (1965), and *Matter of Chu*, 14 I. & N. Dec.

241 (1972), hold that these children are considered to be lawful permanent residents.

In view of these decisions, this Service has received requests for Alien Registration Receipt Cards, Forms I-551, documents issued to lawful permanent residents, for individuals born in the United States in diplomatic status. Until now there was no procedure, however, for creation of records of their lawful permanent residence or for issuance of Forms I-551 to them. On January 21, 1981, our Deputy General Counsel advised that it has been the stated Service policy for the past thirty-five years to treat individuals in this category as lawful permanent residents and that they should be issued Forms I-551. Accordingly, we have developed a procedure to create records of permanent residence for and issuance of Forms I-551 to them.

In order to be consistent, we have set up a parallel procedure for aliens eligible for presumption of lawful admission for permanent residence even though records of their admission cannot be found. Existing §§ 101.1 and 101.2 explain the requirements for presumption of lawful admission for permanent residence.

Because these additions to the regulations are purely procedural in nature, and implement existing interpretations, compliance with the provisions of 5 U.S.C. 553 relative to notice of proposed rulemaking is unnecessary.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of EO 12291.

For the reasons set out in the preamble, Chapter I of Title 8 of the Code of Federal Regulations is amended as set forth below:

#### **PART 101—PRESUMPTION OF LAWFUL ADMISSION**

1. § 101.3 is revised to read as follows:

**§ 101.3 Creation of record of lawful permanent resident status for person born under diplomatic status in the United States.**

(a) *Person born to foreign diplomat.*  
(1) *Status of person.* A person born in the United States to a foreign diplomatic



officer accredited to the United States, as a matter of international law, is not subject to the jurisdiction of the United States. That person is not a United States citizen under the Fourteenth Amendment to the Constitution. Such a person may be considered a lawful permanent resident at birth.

(2) *Definition of foreign diplomatic officer.* "Foreign diplomatic officer" means a person listed in the State Department Diplomatic List, also known as the Blue List. It includes ambassadors, ministers, *chargés d'affaires*, counselors, secretaries and attachés of embassies and legations as well as members of the Delegation of the Commission of the European Communities. The term also includes individuals with comparable diplomatic status and immunities who are accredited to the United Nations or to the Organization of American States, and other individuals who are also accorded comparable diplomatic status.

(b) *Child born subject to the jurisdiction of the United States.* A child born in the United States is born subject to the jurisdiction of the United States and is a United States citizen if the parent is not a "foreign diplomatic officer" as defined in paragraph (a)(2) of this section. This includes, for example, a child born in the United States to one of the following foreign government officials or employees:

(1) Employees of foreign diplomatic missions whose names appear in the State Department list entitled "Employees of Diplomatic Missions Not Printed in the Diplomatic List," also known as the White List; employees of foreign diplomatic missions accredited to the United Nations or the Organization of American States; or foreign diplomats accredited to other foreign states. The majority of these individuals enjoy certain diplomatic immunities, but they are not "foreign diplomatic officers" as defined in paragraph (a)(2) of this section. The immunities, if any, of their family members are derived from the status of the employees or diplomats.

(2) Foreign government employees with limited or no diplomatic immunity such as consular officials named on the State Department list entitled "Foreign Consular Officers in the United States" and their staffs.

(c) *Voluntary registration as lawful permanent resident of person born to foreign diplomat.* Since a person born in the United States to a foreign diplomatic officer is not subject to the jurisdiction of the United States, his/her registration as a lawful permanent resident of the United States is voluntary. The provisions of section 262 of the Act do

not apply to such a person unless and until that person ceases to have the rights, privileges, exemptions, or immunities which may be claimed by a foreign diplomatic officer.

(d) *Retention of lawful permanent residence.* To be eligible for lawful permanent resident status under paragraph (a) of this section, an alien must establish that he/she has not abandoned his/her residence in the United States. One of the tests for retention of lawful permanent resident status is continuous residence, not continuous physical presence, in the United States. Such a person will not be considered to have abandoned his/her residence in the United States solely by having been admitted to the United States in a nonimmigrant classification under paragraph (15)(A) or (15)(G) of section 101(a) of the Act after a temporary stay in a foreign country or countries on one or several occasions.

2. The following § 101.4 is added:

#### § 101.4 Registration procedure.

The procedure for an application for creation of a record of lawful permanent residence and an Alien Registration Receipt Card, Form I-551, for a person eligible for presumption of lawful admission for permanent residence under §§ 101.1 or 101.2 or for lawful permanent residence as a person born in the United States to a foreign diplomatic officer under § 101.3 is described in § 264.2 of this chapter.

### PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

3. Part 264 is amended by adding the following new § 264.2 to read as follows:

#### § 264.2 Application for creation of record of lawful permanent residence and Alien Registration Receipt Card, Form I-551.

(a) *Jurisdiction.* An applicant who believes that he/she is eligible for presumption of lawful admission for permanent residence under §§ 101.1 or 101.2 of this chapter or for lawful permanent residence as a person born in the United States to a foreign diplomatic officer under § 101.3 of this chapter shall submit his/her application for creation of a record of lawful permanent residence to the Service office having jurisdiction over the applicant's place of residence in the United States. The applicant must be physically present in the United States at the time of submission of his/her application.

(b) *Applicant under eighteen years old.* If the applicant is under eighteen years old, the applicant's parent or legal guardian shall prepare and sign the application in the applicant's behalf.

(c) *Filing application.* (1) *Presumption of lawful admission for permanent residence.* An applicant who believes that he/she is eligible for presumption of lawful admission for permanent residence under §§ 101.1 or 101.2 of this chapter shall submit the following:

(i) A completed Form I-90, Application by a Lawful Permanent Resident for an Alien Registration Receipt Card, Form I-551, without fee.

(ii) Form G-325A, Biographic Information.

(iii) The applicant's fingerprints on Form FD-258.

(iv) A list of all the applicant's arrivals in and departures from the United States.

(v) A statement signed by the applicant indicating the basis of the applicant's claim to presumption of lawful admission for permanent residence.

(vi) Documentary evidence substantiating the applicant's claim to presumption of lawful admission for permanent residence, including proof of continuous residence in the United States.

(vii) Two photographs prepared in accordance with the specifications outlined in the instructions to Form I-90. The immigration officer to whom the application is submitted, however, may waive the photographs for just cause.

(2) *Lawful permanent residence as a person born in the United States under diplomatic status.* An applicant who believes that he/she is eligible for lawful permanent residence as a person born in the United States to a foreign diplomatic officer under § 101.3 of this chapter shall submit the following:

(i) A completed Form I-90, Application by a Lawful Permanent Resident for an Alien Registration Receipt Card, Form I-551, without fee.

(ii) Form G-325A, Biographic Information.

(iii) The applicant's fingerprints on Form FD-258.

(iv) The applicant's birth certificate.

(v) An executed Form I-508, Waiver of Rights, Privileges, Exemptions, and Immunities.

(vi) Official confirmation of the diplomatic classification and occupational title of the applicant's parent(s) at the time of the applicant's birth.

(vii) A list of all the applicant's arrivals in and departures from the United States.

(viii) Proof of continuous residence in the United States.

(ix) Two photographs prepared in accordance with the specifications outlined in the instructions to Form I-90.



The immigration officer to whom the application is submitted, however, may waive the photographs for just cause.

(3) *Applicant under fourteen years old.* An applicant under fourteen years old shall not submit Form G-325A, Biographic Information, or his/her fingerprints on Form FD-258.

(d) *Personal appearance.* Each applicant, including an applicant under eighteen years of age, must submit his/her application in person. This requirement may be waived at the discretion of the immigration officer to whom the application is submitted because of confinement of age, physical infirmity, illiteracy, or other compelling reason.

(e) *Interview.* The applicant may be required to appear in person before an immigration officer prior to adjudication of the application to be interviewed under oath concerning his/her eligibility for creation of a record of lawful permanent residence.

(f) *Decision.* The decision regarding creation of a record of lawful permanent residence for an alien eligible for presumption of lawful admission for permanent residence or for a person born in the United States to a foreign diplomatic officer will be made by the district director having jurisdiction over the applicant's place of residence.

(g) *Date of record of lawful permanent residence.* (1) *Presumption of lawful admission for permanent residence.* If the application is granted, the applicant's permanent residence will be recorded as of the date of the applicant's arrival in the United States under the conditions which caused him/her to be eligible for presumption of lawful admission for permanent residence.

(2) *Lawful permanent residence as a person born in the United States under diplomatic status.* If the application is granted, the applicant's permanent residence will be recorded as of his/her date of birth.

(h) *Denied application.* If the application is denied, the decision may not be appealed.

(Secs. 101(a)(20), 103, 262, 264 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1101(a)(20), 1103, 1302, 1304)

Dated: December 23, 1981.

Doris M. Meissner,

Acting Commissioner of Immigration and Naturalization.

[FR Doc. 82-547 Filed 1-7-82; 8:45 am]

BILLING CODE 4410-01-M

## 8 CFR Part 204

### Petition To Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Documents; Certification of Documents

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule adds accredited representatives of recognized nonprofit voluntary agencies to those persons who may certify the authenticity of photo copies of original documents that are submitted in visa petition proceedings. This will allow more petitioners to retain their original documents without fear of loss or access of availability to valuable or sentimental documents. The Service also benefits from a reduction in requests for comparative certifications and a reduction in future requests to return originals from Service files.

**EFFECTIVE DATE:** January 11, 1982.

#### FOR FURTHER INFORMATION CONTACT:

For General Information: Stanley J. Kieszkil, Acting Instructions Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone (202) 633-3048

For Specific Information: Ernest B. Duarte, Jr., Director of Outreach Program, 425 I Street, NW., Room 6244, Washington, D.C. 20536, Telephone (202) 633-4123

**SUPPLEMENTARY INFORMATION:** The present 8 CFR 204.2(h) allows attorneys to certify the authenticity of copies of original documents in visa petition proceedings. This allows petitioners to submit certified copies and to retain valuable or sentimental originals. This practice reduces the Service workload in processing petitions; prevents loss of originals; reduces requests for the return of originals after comparison; and, in the case of originals not accompanied by copies, reduces future requests for the return of originals from Service record files.

Nonprofit voluntary agencies and their employees are permitted to represent aliens before the Service if recognized and accredited by the Board of Immigration Appeals under 8 CFR 292.2. The extension of the certification authority to recognized organizations and their accredited representatives will allow them to better serve their clientele while allowing the Service to maintain the quality and integrity of its adjudication proceedings under 8 CFR Part 204. The Service will continue to reserve the right to require submissions

of the original documents when it deems necessary for proper enforcement of the Act.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the rule is limited to agency practice and procedure which is of benefit to the public.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

### PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

1. In § 204.2, paragraph (h) is revised to read as follows:

#### § 204.2 Documents.

\* \* \* \* \*

(h) *Certification of documents*—(1) *By attorneys.* A copy of a document submitted in support of a visa petition filed pursuant to section 204 of the Act and this Part may be accepted, though unaccompanied by the original, if the copy bears a certification by an attorney typed or rubber-stamped in the following language:

I certify that I have compared this copy with its original and it is a true and complete copy.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_, Attorney at Law

Address: \_\_\_\_\_  
Admitted to Practice in State of \_\_\_\_\_

(2) *By accredited representatives of recognized nonprofit voluntary agencies under § 292.2 of this Chapter.* A copy of a document submitted in support of a visa petition filed pursuant to section 204 of the Act and this Part may be accepted, though unaccompanied by the original, if the copy bears a certification by an accredited representative, typed or rubber-stamped in the following language:

I certify that I have compared this copy with its original and it is a true and complete copy.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_, Accredited Representative

Agency: \_\_\_\_\_

Agency Address: \_\_\_\_\_

Date of Agency Recognition: \_\_\_\_\_

Date of Representative Accreditation: \_\_\_\_\_